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No. 74-1650

In the Supreme Court of the United States

OCTOBER TERM, 1975

ENVIRONMENTAL PROTECTION AGENCY, PETITIONER

v.

ST. JOE MINERALS CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE PETITIONER SUGGESTING MOOTNESS

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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This case arose out of a petition for review filed by respondent in the court of appeals challenging the EPA Administrator's approval of Pennsylvania's implementation plan promulgated under the Clean Air Act. The challenge pertained to the provision in the implementation plan controlling the emission of sulfur oxides from respondent's zinc smelter located at Monaca, Pennsylvania. 25 Pa. Code Regs. 123.21(b); see Pet. App. 3a-4a. In a judgment entered January 29, 1975 (Pet. App. 13a), the court of appeals vacated the Administrator's approval of that provision of the implementation plan (and remanded the matter to the Administrator) on the ground that compliance by the respondent with the limitations imposed was technologically infeasible. See Pet. App. 4a, 7a-12a. Our petition for a writ of certiorari in this case, filed on June 28, 1975, seeks review of that judgment.

After entry of the judgment of the court of appeals, the Commonwealth of Pennsylvania promulgated a new provision to govern the emission of sulfur oxides from zinc smelters. 25 Pa. Code Regs. 123.24; see 40 Fed. Reg. 47521.[1] The revision to the implementation plan was submitted to EPA, and approved by the Administrator on April 23, 1976. 41 Fed. Reg. 18077-18078 (April 30, 1976). The revision thus is a part of the applicable implementation plan under Section 110(d) of the Clean Air Act, as added, 84 Stat. 1680, 42 U.S.C. 1857c-5(d).

In view of this new provision governing sulfur oxide emissions from zinc smelters, the provision of the implementation plan challenged by respondent in this case is no longer applicable to respondent's smelter. The case has thus become moot.[2] Accordingly, the Court should grant the petition for a writ of certiorari, vacate the judgment of the court of appeals, and remand the case to that court with instructions that it be dismissed as moot. See, *e.g.*, *United States* v. *Munsingwear, Inc.*, 340 U.S. 36.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

APRIL 1976.

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[1] In light of this revision to the implementation plan, we filed with the Court on September 24, 1975, a motion to defer consideration of the petition for a writ of certiorari, pending the Administrator's decision whether to approve or disapprove the revision.

[2] As to the new provision, respondent has stated that compliance is economically and technologically feasible (Br. in Opp. 7), and that "there is no longer any controversy between St. Joe and EPA with regard to the sulfur oxides emission standard for zinc smelters in the * * * Plan" (*id.* at 7-8).